87-845

No. .....

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1987

DAVID L. GOWDY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

1. Can a debt statement be material pursuant to 18 *U.S.C.* § 1001 if the loan had been approved prior to the statement being submitted?

2. Can a debt statement on behalf of two entities (Gowdy Insurance and Gowdy Grain) be proven false beyond a reasonable doubt when there was no evidence submitted by the government to contradict that one of the entities (Gowdy Grain) was a creditor?

3. Can the government rely on an adverse inference directly in contradiction to the testimony of their only witnesses to prove guilt beyond a reasonable doubt?

PARTIES

The Petitioner David L. Gowdy was the Appellant in the proceedings in the Court of Appeals for the Fourth Circuit. The Respondent United States of America was the Appellee in the Court of Appeals.

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DAVID L. GOWDY,

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v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner, David L. Gowdy, respectfully prays that a writ of certiorari issue to review the judgments and opinion of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The unreported opinion of the Court of Appeals for the Fourth Circuit and the Order denying Appellant's Petition for Rehearing appear in Appendix A hereto (App. A-1, A-7).

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals was dated and entered on August 28, 1987. A timely petition by Gowdy for a rehearing was denied by order dated September 29, 1987. This Petition for certiorari is filed within 60 days of that date. The Court's jurisdiction is invoked pursuant to 28 *U.S.C.* § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 18, United States Code § 1001, which states:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000.00 or imprisoned not more than five years or both.

Title 18, United States Code § 1503, which states:

> Whoever . . . corruptly . . . endeavors to influence, intimidate, or impede any grand or petit juror, . . . or corruptly, . . . obstructs, or impedes, or endeavors to influence, obstructs, or impedes, the due administration of justice, shall be fined not more than $5,000.00 or imprisoned not more than five years, or both.

STATEMENT OF THE CASE

Petitioner David L. Gowdy is a forty five year old married man with three children from the small southern town of Lake City, South Carolina. From his one man office in Lake City, he is involved in an insurance business, accounting service, grain business and assists the local farmers with their financial problems. He was convicted along with Co-Defendant Billy Eaddy, with Conspiracy to Defraud the United States by impairing, impeding, obstructing, hindering and defrauding the Farmers Home Administration (FmHA) in violation of 18 *U.S.C.* § 371; with embezzlement in violation of 18 *U.S.C.* § 641; with making false statements of debt to the FmHA in violation of 18 *U.S.C.* § 1001. Gowdy also was convicted of obstruction of justice in violation of 18 *U.S.C.* § 1503.

The alleged crimes arose out of Co-Defendant Eaddy's application and obtaining an emergency loan from FmHA in the amount of $327,420.00 which was secured by mortgages on his land and equipment based on FmHA appraisals and additional liens on his crops. Petitioner's involvement in the loan process consisted of signing a debt statement for Co-Defendant Eaddy on behalf of Gowdy Insurance and Gowdy Grain Co. in the amount of $17,047.00.

(Appendix B-1). Petitioner's conviction on the obstruction of justice count rested on an alleged false document (ledger card) submitted to the grand jury. (Appendix B-2).

Co-Defendant Eaddy testified he was under the impression that the complained of transactions, including the one with Petitioner ($17,047.00 debt to Gowdy Insurance and Gowdy Grain) were within the permitted use of loan proceeds as provided in Title 7, *C.F.R.*, Chapter XVIII, § 1945.52 and § 1945.66.

The evidence was undisputed that the funds used by Eaddy to pay Gowdy Insurance (and Petitioner) were those advanced to him and secured by liens to FmHA and such liens were sufficient to insure the FmHA's interests were protected. The evidence the government sought to rely upon to prove beyond a reasonable doubt that Petitioner made material false statements which would hinder or impede an agency of the United States consisted solely of the debt statement on behalf of *Gowdy Insurance and Gowdy Grain* (Appendix B-1) and the hail insurance records from Gowdy Insurance. There was no evidence offered on behalf of the government to refute monies loaned Co-Defendant Eaddy by the Petitioner, personally or through his Grain Company.

In support of the obstruction of justice count the government offered the testimony of Petitioner's secretary and government agent Yeargin concerning the allegedly false ledger card (Appendix B-2) submitted to the grand jury. However, these witnesses testified the card was recopied accurately by hand. The government sought to establish proof beyond a reasonable doubt on the ob-

struction charge by having the jury draw an inference of wrongdoing contrary to the evidence presented by the government's own witnesses.

Petitioner along with the Co-Defendant were convicted on all counts of the indictment and the Petitioner was sentenced to Two (2) years in prison and Five (5) years probation.

The Court of Appeals for the Fourth Circuit affirmed the conviction in a corrected opinion which still contains numerous errors. The Court of Appeals in addressing Petitioner's second issue held that it was not error for the trial court to admit the statement of debt. (Appendix A-5). This was not the issue raised by Petitioner. The issue actually raised was whether an allegedly false statement was material under § 1001 despite the fact that the loan had been approved prior to the making of the debt statement. The Court failed to resolve this issue. The Court in addressing the obstruction of justice count erred in stating that the handwritten copy (ledger card—Appendix B-2) was made by Eaddy's secretary. (Appendix A-4). The record established beyond any reasonable doubt that the ledger was copied by Petitioner's secretary with the knowledge and acquiescence of government agent Yeargin (Rec. pgs. 268, 283, 284, 332-334, 340-342, 354-355). The Court also failed to address the assertions of the Petitioner that the debt statement was not false because it consisted of monies owed him personally by Co-Defendant Eaddy. The Court further erred in stating the alleged wrongdoing occurred during the Eaddy's divorce, which took place during the time in question. (Appendix A-4). Eaddy's divorce occurred more than 18 months after the

debt statement was signed by the Petitioner and more than 2 years before the grand jury subpoena was issued for insurance documents. (Appendix B-3).

Petitioner filed a petition for rehearing asking the Court of Appeals to correct the errors in opinion and to reverse his conviction. The Court of Appeals for the Fourth Circuit denied the Petition for Rehearing in an Order filed September 29, 1987. (Appendix A-7).

REASONS FOR GRANTING THE WRIT

I. The Fourth Circuit's Decision Eliminates the "Materiality" Element from § 1001 Criminal Offenses and Conflicts with the Decisions of the Fifth Circuit in United States v. Beer; with the Decision of the First Circuit in Freidus v. United States; and, with the Decision of the Tenth Circuit in United States v. Radetsky.

The decision of the Fourth Circuit Court of Appeals effectively eliminates the "materiality" element from Title 18 *U.S.C.* § 1001 false statement offenses. It has been consistently held that "materiality" of a misstatement is an essential element of offenses set forth under § 1001. *United States v. Radetsky,* 535 F.2d 556, 571 (10th Cir.) cert. denied, 429 U.S. 820 (1976). "While materiality is not an explicit requirement of the second, false statements, clause of § 1001, courts have inferred a judge-made limitation of materiality in order to exclude trifles from its coverage." *United States v. Lichenstein,* 610 F.2d 1272, 1278 (5th Cir.) cert. denied, 447 U.S. 907 (1980). The materiality element has been included to ensure that the

highly penal nature of § 1001 is satisfied only with a material falsification. *Freidus v. United States,* 223 F.2d 598, 601 (D.C.Cir. 1955).

Here, the emergency loan to Co-Defendant Eaddy was approved on January 9, 1981, while the statement of debt submitted by the Petitioner was not submitted until on or about January 23, 1986. The statements could not have been material to the decision to make the loan to Eaddy by FmHA. The debt statement of the Petitioner fails to meet the essential elements necessary to support a conviction under § 1001. The only evidence in the record upon which Petitioner was convicted of making an alleged false statement in violation of § 1001 was a debt statement he signed acknowledging he, as Gowdy Insurance *and* as Gowdy Grain Co., was owed $17,047.00 by Co-Defendant Billy Eaddy. The sole evidence the government sought to rely upon to establish guilt beyond a reasonable doubt was the records of hail insurance credits and debits from Gowdy Insurance. There is no evidence in the record the debt statement for Gowdy Insurance *and* Gowdy Grain Companies was false. There was no evidence presented at trial to contradict the testimony of witnesses that Petitioner had loaned Eaddy as well as others great sums of money without security. Investigator Yeargin testified for the government that he never inquired whether Eaddy owed Gowdy and/or Gowdy Grain money for personal loans. (Rec. p. 357-358). Moreover, Petitioner testified the debt statement reflected unpaid personal loans between the parties. (Rec. p. 556-560). The only statement provided by Petitioner was on behalf of both Gowdy Insurance *and* Gowdy Grain and the officials at FmHA apparently changed the information to reflect only Gowdy

Insurance. Petitioner should not suffer criminal penalties because the government officials incorrectly transferred the information on the debt statement. (Appendix B-1).

The test for determining whether or not a statement is material for purposes of sustaining a conviction for violation of 18 *U.S.C.* § 1001, is whether the statement is false *and* has the natural tendency to influence the agency action or is capable of influencing agency action. *United States v. Norris,* 749 F.2d 1116 (4th Cir. 1984). Moreover, the issue of materiality is a matter of law for the court to decide. *Norris, supra* at 1122. The essential elements required to be proved beyond a reasonable doubt under 18 *U.S.C.* § 1001 are:

1. Making and using or causing the making and using of a false writing or document as to a material fact in relation to a matter within the jurisdiction of a department of the United States.

2. Doing the act knowing at the time that the writing or document was false, ficticious or fraudulent, and

3. Doing the act knowingly and willfully. United States v. Seay, 718 F.2d 1279 (4th Cir. 1983).

The debt statements of the Petitioner cannot be considered material if the decision to loan the money to Eaddy had already been decided prior to the alleged false statements being submitted. Mr. Barnhill, FmHA Emergency Loan Supervisor, testified that the Eaddy loan amounts were approved as of January 9, 1981. (Rec. p. 164, L. 6-11). This was corroborated by Willis Hill, District Loan Specialist. (Rec. p. 115, L. 17-23). If the decision to loan the money, and the amount of entitlement was decided as of January 9, 1981, the statements of January 23, 1981 could not have been material because the statements

could not have influenced the FmHA decision. *Norris, supra.*

The Fourth Circuit concluded the debt statement was admissible (Appendix A-5). This issue was never raised in the Court of Appeals. Assuming *arguendo,* the Court intended to say material, the decision of the Fourth Circuit conflicts with the decisions of *United States v. Beer,* 518 F.2d 168 (5th Cir. 1975); *Freidus v. United States, supra;* and *United States v. Radetsky, supra.*

In *Beer* the Fifth Circuit Court of Appeals reversed a conviction for making a false statement in violation of § 1001. The Fifth Circuit held:

> In weighing the materiality of a false statement which may make the declarant liable for a $10,000 fine and five years imprisonment, we are constrained to require a reasonable showing of the potential effects of the statement. If the functioning of a department or agency would not have been materially affected had it relied upon the statement, then the statement must necessarily be immaterial. 518 F.2d at 172.

In Beer, a bank president failed to list a loan on which he was accommodated on a questionnaire to the Federal Deposit Insurance Corporation. The Fifth Circuit held the failure was immaterial because the loan had been repaid within a short time, there was no showing that the functions of the agency had been impaired. 518 F.2d at 172.

In *Freidus* the District of Columbia Circuit reasoned that the financial statement submitted was material *only* if it misrepresented the ability to repay a loan by misstating profitability, assets or liabilities. 223 F.2d at 602. The Court further held: "No perversion of a governmental function could possibly result from a false state-

ment that was incapable of affecting or influencing such function." 223 F.2d at 601, 602. The government asserted in *Freidus* that the financial statement was false because the defendant was actually operating at a deficit rather than surplus. The Court held the failure to earmark surplus as earned or donated does not render the entry false within the meaning of a highly penal statute. 223 F.2d at 604.

In *Radetsky* an osteopathic physician was convicted of making false statement regarding medicare claims. He argued that since the allegedly false statements related only to non-compensable drugs, they were incapable of inducing payment and not material as a matter of law. 535 F.2d at 571. The Tenth Circuit Court of Appeals reversed the conviction for making false statement since the misstatements could not induce payment, because of a lack of authority, the statements were immaterial as a matter of law. 535 F.2d 572.

In Petitioner's case, there is no evidence showing that the statements influenced, affected or could have influenced or affected the proper functioning of the FmHA. To the contrary, the FmHA testified the loan had already been approved and was protected by adequate security.

The information submitted on the debt statement cannot be material and false when the government failed to offer any evidence contradicting the fact that Eaddy owed money to the Petitioner for personal loans as reflected in the making of the debt statement on behalf of the Insurance *and* Grain Company. The government contends the money was obtained by Petitioner and immediately transferred to Eaddy which establishes the falsity of the debt.

It was uncontradicted that new monies were loaned by the Petitioner to Eaddy upon his receipt of the $17,047.00 check from FmHA in order to cover checks which were going to cause additional overdrafts in the Eaddy farm account. (Rec. p. 464-465).

The Fourth Circuit Court of Appeals in this decision has effectively eliminated the material requirement from § 1001 cases as the evidence presented by the government was insufficient to establish materiality as a matter of law. Moreover, this decision conflicts with the rationale of *Beer, Freidus* and *Radetsky* which mandate that a statement which cannot affect or influence an agency functioning cannot be material.

II. The Decision of the Fourth Circuit Conflicts with Rodgers v. United States Because It Permits the Government to Obtain a Criminal Conviction on the Basis of an Adverse Inference When the Only Evidence Presented is Inconsistent with the Inference the Government Wishes Drawn.

On appeal to the Fourth Circuit, Petitioner challenged his conviction for obstruction of justice because the only witnesses for the government testified without contradiction that the alleged false document (hand copied ledger card) was a true and accurate copy. (Rec. p. 243-245).

The federal grand jury investigating claims against Eaddy caused a subpoena to be issued to Gowdy Insurance Company by serving the office manager, Belvadeen Kirby. The opinion of the Fourth Circuit incorrectly identifies Mrs. Kirby as Eaddy's secretary. (Appendix A-4). The subpoena requested all documents concerning insurance coverage, claims for loss, cancelled checks pertinent to Billy

L. Eaddy . . . during 1981 and 1982. Mrs. Kirby presented a group of documents to the federal grand jury including a hand copied ledger card re: account of Billy L. Eaddy (Appendix B-2). It is this hand copied document which the government contended was false and which was supplied to the grand jury in an effort to obstruct the due administration of justice.

During the trial, the government called Belvadeen Kirby as its witness and she testified *without contradiction* that the hand copied ledger card was a true and accurate reproduction of the original ledger card which could not be photocopied. She further testified that she asked Gowdy if it was alright to hand copy the card and he said he didn't see why not. (Rec. p. 268, L. 17-23). Petitioner told Investigator Yeargin that the ledger card had been copied by hand. (Rec. p. 332, L. 2-13). Mrs. Kirby further maintained that all documents which were found at the time the subpoena was served concerning Eaddy had been turned over to the government. In fact, additional documents were discovered after the indictment was returned and they were turned over to the government.

The only other witness concerning the allegedly false ledger card was the government investigator Bobby Yeargin who testified that he had been informed by the Petitioner that Mrs. Kirby had copied the ledger card and that she had inquired whether this was proper. (Rec. p. 332, L. 2-13 and p. 334). Yeargin also stated he had no reason to doubt the information that had been provided the grand jury under the subpoena. (Rec. p. 340-342). Yeargin further testified that it was not unusual to hand copy documents which could not be photocopied, that he was told as Mrs. Kirby testified that she copied the ledger card

because the original was not legible, and that Petitioner was not guilty of anything because the record had been recopied. (Rec. p. 354, L. 13—p. 355, L. 22). Yeargin admitted the Petitioner had provided the information on the hail insurance policies and had attempted to contact the insurance companies for further information. (Rec. p. 342, L. 20-22, p. 351, L. 11-24). Yeargin further testified that he never asks the Petitioner about personal loans to Eaddy or whether Gowdy Grain was owed any money by Eaddy. (Rec. p. 357, L. 25—p. 359, L. 4).

Although, the government does not vouch for the credibility of a witness by calling him to the stand, *United States v. Norman,* 518 F.2d 1176 (4th Cir. 1975), the government cannot rely on an adverse inference when the *only* evidence presented by the government is inconsistent with the inference the government wishes drawn. *Rodgers v. United States,* 402 F.2d 830 (9th Cir. 1968). Here, the government sought to establish the inference that the Petitioner through Mrs. Kirby sought to obstruct the due administration of justice by submitting a false document to the grand jury, when the *only* evidence is to the contrary. Mrs. Kirby testified she copied the ledger card because it would not photocopy and that she copied it accurately and attached an adding machine tape. Mrs. Kirby also testified she told investigator Yeargin that she had copied the ledger card. She further testified that she asked the Petitioner if it was alright to copy the illegible card. Yeargin testified he saw nothing unusual about Mrs. Kirby copying the card and in fact had been told about it by the Petitioner.

The only evidence is that Mrs. Kirby responded to the subpoena with accurate information, that Petitioner turned over additional documents upon their discovery and at no time did he submit or caused to be submitted false documents to the grand jury in an effort to obstruct the due administration of justice. The government should not be allowed to bootstrap its case by attempting to draw inferences directly in contradiction to the hard evidence presented at trial in order to obtain a criminal conviction.

CONCLUSION

The decision of the Fourth Circuit Court of Appeals amounts to an elimination of the "materiality" element in § 1001 false statement offenses. The Fourth Circuit has refused to impose a strict interpretation on a criminal statute and has ignored the fundamental mandate that all elements of a criminal statute must be satisfied by sufficient competent evidence. The decision conflicts with the decisions of *Beer, Freidus* and *Radetsky* because the debt statement in this case was incapable of affecting agency function, therefore, was incapable of being material. The decision further conflicts with the decision of *Rodgers v. United States* because the Fourth Circuit has permitted the government to base its conviction for obstructing justice on inferences directly in contradiction to the evidence offered from its only witnesses.

For all of the foregoing reasons, this Court should grant certiorari, and the judgment below should be reversed.

Respectfully submitted,

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November 27, 1987

APPENDIX A

—Corrected Opinion—

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 86-5611

UNITED STATES OF AMERICA

Plaintiff-Appellee

versus

BILLY L. EADDY

Defendant-Appellant

No. 86-5612

UNITED STATES OF AMERICA

Plaintiff-Appellee

versus

DAVID L. GOWDY

Defendant-Appellant

Appeals from the United States District Court for the District of South Carolina, at Florence. C. Weston Houck, District Judge. (CR-85-255)

Argued: May 8, 1987 Decided: August 28, 1987

Before RUSSELL and HALL, Circuit Judges, and VAN GRAAFEILAND, Senior United States Circuit Judge for the Second Circuit, sitting by designation.

Bruce Alfred Byrholdt (Chapman, King & Byrholdt on brief); Eugene Noel Zeigler for Appellants; Vinton DeVane Lide, United States Attorney; Marvin Jennings Caughman, Assistant United States Attorney (Donen Davis, Third Year Law Student; Marcia A. Mason, Third Year Law Student on brief) for Appellee.

PER CURIAM:

Billy L. Eaddy and David L. Gowdy appeal from their conviction by a jury of conspiring to defraud the United States in violation of 18 U.S.C. §§ 371 and 2, conversion of government funds in violation of 18 U.S.C. §§ 641 and 2, and making false statements of debt to a government agency in violation of 18 U.S.C. §§ 1001 and 2. In addition, Gowdy appeals his conviction of obstructing justice in violation of 18 U.S.C. §§ 1503 and 2. We affirm.

I.

On December 18, 1980, Eaddy applied to the Farmers Home Administration ("FmHA") for an emergency loan totaling $327,420. Eaddy complied with FmHA's request for statements of his debts and collateral. Each form was prepared by Eaddy and the various creditors, one of whom was Gowdy, who acted as Eaddy's accountant and crop insurance salesperson. According to the debt statement, Eaddy owed his father $70,000, Heston Evans $14,000, and Gowdy $17,047.

Eaddy's loan was approved and a check for $327,420 was subsequently deposited in his trust account on March 16, 1981. Pursuant to FmHA's guidelines, the funds representing Eaddy's debt to his father, Evans, and Gowdy were immediately dispersed to Eaddy's alleged creditors and the remainder was left in the trust account under the supervision of the FmHA.

Soon thereafter, three checks were deposited in Eaddy's personal accounts. One check was from Eaddy's father and a second was from Evans. Both corresponded exactly with the sums they received from the FmHA loan. The third check was from Gowdy, written in an amount $1,829.72 less than he received from the FmHA loan. Eaddy spent the majority of these funds on personal investments including a federal national mortgage discount note and a high interest treasury bill.

On December 7, 1981, Eaddy was confronted by the FmHA county supervisor and accused of falsifying documentation for his FmHA loan. Eaddy refused to respond to the accusation. Following an investigation, Eaddy and Gowdy were brought to trial and eventually sentenced to two years incarceration and five years probation.

II.

On appeal, appellants contend that the district court committed reversible error by (1) submitting the obstruction of justice charge against Gowdy to the jury, (2) holding that the debt statement of Gowdy was material and (3) excluding FmHA regulations from the evidence and instructions proffered by Eaddy. Gowdy also attacks the sufficiency of the evidence supporting his con-

viction of converting government funds and conspiring to defraud a government agency. We find no merit in any of the appellants' contentions.

Gowdy contends that there was insufficient evidence against him to submit the obstruction of justice charge to the jury. Gowdy was charged with obstructing justice by supplying the grand jury investigating Eaddy with a copy of a ledger from Gowdy's solely-owned insurance agency which had been altered to overstate Eaddy's debts to the agency. The copy indicated that Eaddy owed $17,040 to the agency.

At trial, the copy was attacked as being a fraudulent effort by Gowdy to disguise wrongdoings. The evidence at trial revealed that (1) the copy presented to the grand jury was not the original ledger which has since been "lost," but was a hand written copy made by Eaddy's secretary, (2) the composite records kept by the insurance companies which supplied insurance policies to Gowdy's agency indicated that Eaddy's debt was $3,000 rather than $17,040, as claimed by Eaddy and Gowdy, and (3) during Eaddy's divorce, which took place during the time in question, Eaddy failed to list on his balance sheet and Gowdy failed to recount during his testimony as Eaddy's accountant, any mention of this debt. We find no error in the district court's conclusion that this evidence was sufficient to send the obstruction of justice charge to the jury.

We also find no merit in appellants' contention that the district court erred in admitting the statement of debt submitted by Eaddy and Gowdy to the FmHA as material to the question of whether 18 U.S.C. § 1001 was

violated.[1] Section 1001 prohibits the intentional use of statements known to be false before a United States agency. Gowdy insists that § 1001 was not violated because the FmHA did not rely upon the allegedly false statement of debt in granting the loan.

Even assuming that the government did not rely on the false statement, we find no error in the district court's decision to admit the statement of debt. This Court has stated that with regard to § 1001 violations, "[t]here is no requirement that the false statement influence or effect the decision making process of a department of the United States government." Instead, they need only be the type that would have the "natural tendency to influence" the government agency. *United States v. Norris*, 749 F.2d 1116 (4th Cir. 1984). Clearly, a disclosure which overstated the applicant's debt would be material in deciding whether to grant an emergency loan. Therefore, we see no error in the district court's decision to admit the debt statement into evidence.

We also reject Eaddy's claim that the district court erred in excluding from evidence and refusing to read to the jury two federal regulations Eaddy relied upon

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[1] 18 U.S.C. § 1001 states in pertinent part:

Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.

for his defense. Eaddy insists that a copy of 7 C.F.R. § 1902.10(d) and 7 C.F.R. § 1945.66(2) should have been admitted as evidence and read to the jury as part of the instructions. We conclude that if any error resulted from this omission, such error is harmless because the regulations would not have provided Eaddy with a defense.[2]

Finally, we reject as meritless Gowdy's contention that insufficient evidence supports his conviction of conspiring to defraud the government and aiding Eaddy in converting government funds to his own use. The following evidence was admitted at trial to prove Gowdy's involvement in the conspiracy and conversion: (1) Gowdy falsified the debt disclosure statement submitted to the FmHA, (2) Gowdy received $17,040 from the FmHA as Eaddy's creditor, when his testimony at Eaddy's divorce hearing and the records kept by the insurance company which supplied Gowdy's insurance agency did not indicate that the debt was owed, (3) Gowdy transferred all but $1,829.72 of the $17,040 to Eaddy, and (4) Gowdy falsified the copy of his insurance agency's ledger to disguise wrongdoings. We find that this evidence provides

---

[2]Section 7 C.F.R. § 1902.10(d) permits proceeds from the FmHA supervised account to be used toward "family living expenses." This regulation provides no defense for Eaddy because the funds he claims to have used for such expenses were not derived from the FmHA supervised account, but rather, were part of those funds paid outright to his alleged creditors. Nor does § 1945.66(2) provide any defense for Eaddy. That section permits proceeds from the loan to be used for the next year's production costs. Eaddy argues that the $14,000 payment to Evans was payment for the next two years rent. Significantly, however, § 1945.66(2) permits payments only toward the *first* 25 year's production expenses.

sufficient basis from which a jury could find Gowdy guilty of conspiring to defraud the FmHA and converting government funds.

For the foregoing reasons, the judgment of the district court is, accordingly, affirmed.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 86-5611

United States of America,

Appellee,

versus

Billy L. Eaddy,

Appellant.

No. 86-5612

United States of America,

Appellee,

versus

David L. Gowdy,

Appellant.

On Petition for Rehearing

O R D E R

(Filed Sept. 29, 1987)

Upon consideration of the appellants' petition for rehearing.

IT IS ORDERED that the petition for rehearing is denied.

Entered at the direction of Judge Hall for a panel consisting of Judge Russell, Judge Hall and Judge Van Graafeiland, Senior Judge, United States Court of Appeals for the Second Circuit, sitting by designation.

For the Court,
JOHN M. GREACEN
Clerk

APPENDIX B

Appendix B1—Position 1

Position 1

USDA—FmHA
Form FmHA 440-32
(Rev. 5478)

FORM APPROVED
OMB No. 40-R3515

REQUEST FOR STATEMENT OF DEBTS AND COLLATERAL

TO: (Name and Address of Secured Party)
GOWDY INSURANCE
Rt. 2, Box 181
Lake City, S.C. 29560

RETURN TO: FARMERS HOME ADMINISTRATION

Farmers Home Administration, USDA
Room 236, McMillan Federal Bureau
Florence, SC 29501

I, Billy L. Eaddy, Rt. 3, Box 92, Lake City, S.C., hereby request the following information as to the status of the secured transaction between us under the Uniform Commercial Code:

1. List debt(s) owed by me to you:

Principal Balance	Accrued Interest	Date	Amount Delinquent
$17,047.00	$	1/1/81	$17,047.00

Annual Installment	Interest Rate	Daily Interest Accrual	Final Date Due
$17,047.00	.....%	$	1/1/81

1. Is interest charged on unpaid principal only?.....

(X) Yes ( ) No If "NO", explain .....

.....

2. *Describe collateral for such debt(s):*

3. Does the security agreement(s) contain a future advance clause?.....( ) Yes (✓) No

4. Does the security agreement(s) contain an after-acquired property clause? ( ) Yes (✓) No

5. Are you willing to extend, renew or reduce such debt(s)? ..... ( ) Yes (✓) No

If "YES", indicate terms and conditions.....

.....

SECURED PARTY'S REPLY

This requested information is submitted as of the date shown below.

DAVID L. GOWDY
(Secured Party's Signature)

Date: 1/23/81

Telephone: 803-385-2756
(Area Code) (Number)

Sincerely yours,

BILLY L. EADDY
(Debtor's Signature)

Date: 1/23/81

FmHA 440-32 (Rev. 5-4-78)
U.S. GPO 1979-0-665-011/1514

GOVERNMENT EXHIBIT 8A

HAIL
GOWDY'S INSURANCE AGENCY, INC.
ROUTE 2, BOX 181
LAKE CITY, SOUTH CAROLINA 29560
PHONE 389-2796

A 1.5% SERVICE CHARGE WILL BE APPLIED TO ALL UNPAID BALANCES WHICH ARE OVER 30 DAYS OLD.

Name BILLY EADDY

Address Route 3

City Lake City, S.C. 29560

Renewal Date	Policy Number	Comp	Property and Coverage	Debit	Credit	Balance
6/12/78	209853	CN	Hail Ins.	1750.00		1750.00
6/12/78	209854	CN	Hail Ins.	3560.00		5310.00
5/ 8/79	HU 3368	HU	Hail Ins.	4000.00		9310.00
5/19/79	HU 3384	HU	Hail Ins.	2400.00		11710.00
6/ 4/79	CH 7006456	Cont	Hail Ins.	3200.00		14910.00
6/ 1/80			Ser. Chg.	223.65		15133.65
7/ 1/80			Ser. Chg.	227.00		15360.65
8/ 1/80			Ser. Chg.	230.40		15591.05
9/ 1/80			Ser. Chg.	233.86		15824.91
10/ 1/80			Ser. Chg.	237.37		16062.28
11/ 1/80			Ser. Chg.	240.93		16303.21
12/ 1/80			Ser. Chg.	244.55		16547.76
1/ 1/81			Ser. Chg.	248.21		16795.97
2/ 1/81			Ser. Chg.	251.03		17047.00
3/16/81			R.		17047.00	—o—
6/18/81	CH 7178773	C	Hail & Wind	2100.00		2100.00
7/31/81	CH 7178773		Credit by loss		2100.00	—o—
7/21/83	CH 7186288	Cont	Hail Ins.	1200.00		1200.00
8/22/83	CH 7186288		Credit by loss		1200.00	—o—

GOVERNMENT EXHIBIT 8AA

SUBPOENA TO TESTIFY BEFORE GRAND JURY

UNITED STATES DISTRICT COURT

DISTRICT SOUTH CAROLINA

Gowdy Insurance Company, Lake City, South Carolina.

Subpoena For [X] Document or Object.

YOU ARE HEREBY COMMANDED to appear in the United States District Court at the location, date and time specified below to testify before the Grand Jury in the above entitled case.

Place: Room 266, United States Courthouse, 1845 Assembly Street, Columbia, South Carolina.

Courtroom: Grand Jury Room.

Date and Time: June 4, 1985, 10:00 A.M.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):[1]

All documents concerning insurance coverage, claims for loss, cancelled checks pertinent to Billy L. Eaddy, including company records, deposit slips, bank statements showing receipt and subsequent disbursement of premium payments to Gowdy Insurance Company by Billy L. Eaddy during 1981 and 1982.

12/3/85
/s/ (Illegible)

[ ] Please see additional information on reverse

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

By: /s/ John W. Williams
CLERK

/s/ John C. Rogers
Deputy Clerk

Date: 5/16/85

This subpoena is issued on application of the United States of America by:

Name, address and Phone Number of Assistant U.S. Attorney:

/s/ Marvin J. Caughman
Assistant U.S. Attorney
P. O. Box 2266
Columbia, SC 29202
(803) 765-5125
MJC/ymd # 31 (GJ # 1)

RETURN OF SERVICE[2]

Received by server.
Date: 5-16-85
Place: Columbia, SC

Served:
Date: 5-16-85
Place: Lake City, SC

Served on (Name):
Bearvadwen Kirby, Office Manager

Served by:
Bobby Yeargin.

Title:
Special Agent, OIG—I—USDA

STATEMENT OF SERVICE FEES

Travel:
Services:
Total:

DECLARATION OF SERVER[1]

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on (Date) 5-16-85.

/s/ Bobby Yeargin
Signature of Server
Atlanta, Georgia
Address of Server

Additional information:

Records rec'd by S/A Yeargin before Grand Jury on 6/4/85. YMD

Supreme Court, U.S.
FILED
FEB 16 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-845

In the Supreme Court of the United States

OCTOBER TERM, 1987

DAVID L. GOWDY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

CHARLES FRIED
Solicitor General
WILLIAM F. WELD
Assistant Attorney General
MAURY S. EPNER
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

app

QUESTIONS PRESENTED

1. Whether petitioner's false statement to the Farmers Home Administration was "material" for purposes of 18 U.S.C. 1001.

2. Whether the evidence was sufficient to support petitioner's obstruction of justice conviction.

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In the Supreme Court of the United States

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DAVID L. GOWDY, PETITIONER

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A7) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 28, 1987. A petition for rehearing was denied on September 29, 1987 (Pet. App. A8-A9). The petition for a writ of certiorari was filed on November 21, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of South Carolina, petitioner was convicted of conspiring to defraud the United States, in violation of 18 U.S.C. 371; conversion of government funds, in

violation of 18 U.S.C. 641; making a false statement to a government agency, in violation of 18 U.S.C. 1001; and obstruction of justice, in violation of 18 U.S.C. 1503. He was sentenced to two years' imprisonment and a consecutive five-year term of probation.

1. On December 18, 1980, Billy Eaddy, petitioner's co-defendant, applied to the Farmers Home Administration (FmHA) for an emergency loan in the amount of $327,420. On January 9, 1981, the FmHA calculated the amount that Eaddy would be allowed to borrow. Two weeks later, on January 23, 1981, Eaddy submitted forms to the FmHA providing information about his debts and collateral. Each form was prepared by Eaddy and his creditors, including petitioner, who acted as Eaddy's accountant and his crop insurance salesman during the period in question. According to the debt statement, Eaddy owed his father $70,000, he owed Heston Evans $14,000, and he owed petitioner $17,047. Pet. App. A2; C.A. App. 44-45, 75-78, 115, 164.

On January 26, 1981, Eaddy's loan was approved by the FmHA's county supervisor (C.A. App. 784). The approval form stated that the application was approved "[a]s of this date 1/26/81" (*ibid.*). On March 16, 1981, the FmHA deposited a check in the amount of $327,420 in Eaddy's trust account. Pursuant to FmHA guidelines, the funds representing Eaddy's debts to his father, to Heston Evans, and to petitioner were immediately disbursed to those purported creditors, and the remainder was left in the trust account under the supervision of the FmHA. Pet. App. A3.

Three checks were later deposited in Eaddy's personal accounts. Two of the checks, which were from Eaddy's father and Heston Evans, were for the same amounts that those two individuals had received from the FmHA as a result of the loan. The third check, which was from petitioner, was for approximately $1,800 less than petitioner

had received from the FmHA. Eaddy used most of the funds to make personal investments, including a federal national mortgage discount note and a high interest treasury bill. Pet. App. A3.

On December 7, 1981, the FmHA county supervisor confronted Eaddy and accused him of falsifying documentation for his FmHA loan. Eaddy declined to respond to the accusation. A grand jury subsequently investigated Eaddy and, in connection with its inquiry, subpoenaed pertinent documents from petitioner's solely-owned insurance agency. In response to the subpoena, petitioner furnished the grand jury with a handwritten copy of a ledger from his agency. The ledger reflected that Eaddy owed $17,040 to petitioner's agency. In fact, it was later learned that Eaddy owed the agency only about $3,000. Pet. App. A3-A4, B4.

2. The court of appeals affirmed the convictions of both Eaddy and petitioner (Pet. App. A1-A7). It rejected petitioner's argument that his false statement (*i.e.*, the debt statement submitted on January 23, 1981) was not material because the government did not actually rely on it. According to the court, " '[t]here is no requirement that the false statement influence or [a]ffect the decision making process of a department of the United States government' " (Pet. App. A5 (citation omitted)). Instead, the court noted, the statement must simply have "the 'natural tendency to influence' the government agency" (*ibid.* (citation omitted)). Here, the court concluded, the debt statement met that test because "a disclosure which overstated [an] applicant's debt would be material in deciding whether to grant an emergency loan" (*ibid.*). The court of appeals also rejected petitioner's claim that the evidence was insufficient to support his obstruction of justice conviction (*id.* at A4).

ARGUMENT

1. Petitioner claims (Pet. 6-11) that his false statement was not material under the federal false statement statute, 18 U.S.C. 1001, because the FmHA had already decided to approve Eaddy's loan request before it received the debt statement. That contention is totally without merit because it is based on a false factual premise. Although the amount of the loan was initially calculated before the false statements were made, the loan was not officially approved until January 26, 1981, three days *after* the debt statement had been submitted (C.A. App. 115, 164, 784).[1] Moreover, the FmHA did not disburse the loan funds until March 16, 1981 (Pet. App. A3). Clearly, a document overstating an applicant's debt is material to the FmHA in deciding whether to grant a loan, how much to lend, and the amount to disburse to each purported creditor. Such a false statement is certainly capable of influencing the decisionmaker, which is all that is required to establish materiality under 18 U.S.C. 1001. See, *e.g.*, *United States* v. *Corsino*, 812 F.2d 26, 30-31 (1st Cir. 1987) (citing numerous cases).[2]

---

[1] Petitioner erroneously states (Pet. 7), in what is apparently a typographical error (compare Pet. 8), that the debt statement was submitted on January 23, 1986.

[2] Petitioner errs in claiming (Pet. 9-11) that the decision below conflicts with *United States* v. *Beer*, 518 F.2d 168 (5th Cir. 1975); *Freidus* v. *United States*, 223 F.2d 598 (D.C. Cir. 1955); and *United States* v. *Radetsky*, 535 F.2d 556 (10th Cir.), cert. denied, 429 U.S. 820 (1976). In those cases, unlike the present case, the statement at issue could not have influenced the government agency involved. All three decisions concur with the decision below that a statement is material as long as it has a natural tendency to influence, or is capable of influencing, the decisionmaker. See *Beer*, 518 F.2d at 171; *Radetsky*, 535 F.2d at 572 n.17a; *Freidus*, 223 F.2d at 601-602.

2. Petitioner also claims (Pet. 11-14) that the evidence was insufficient to support his obstruction of justice conviction. That factbound question, which was resolved against petitioner by both courts below, does not warrant further review by this Court. See generally *United States* v. *Reliable Transfer Co.*, 421 U.S. 397, 401 n.2 (1975). As the court of appeals explained (Pet. App. A4), the evidence at trial showed that the original version of the ledger that petitioner submitted to the grand jury had been mysteriously "lost," that other records showed Eaddy's debt to be far less than that reflected on the ledger, and that most of the funds received by petitioner from the FmHA as a result of Eaddy's loan were later transferred to Eaddy (*ibid.*). That evidence is plainly sufficient to establish that petitioner endeavored to obstruct justice by knowingly submitting a false document to the grand jury.[3]

---

[3] Petitioner errs in asserting (Pet. 13) that the present case conflicts with *Rodgers* v. *United States*, 402 F.2d 830 (9th Cir. 1968). In *Rodgers*, the court reversed a conviction for interstate transportation of a stolen automobile because the government had not only failed to offer any evidence that the defendant knew the vehicle in question was stolen but in fact had offered evidence supporting the contrary inference (*id.* at 833-834). The court emphasized that its holding was a narrow one "limit[ed] * * * to this case" (*id.* at 834). The facts here are readily distinguishable, since the inferences from the evidence plainly point to petitioner's guilt. See Pet. App. A6 (summarizing evidence).